

Senate Bill No. 308

Passed the Senate May 23, 2005

Secretary of the Senate

Passed the Assembly August 17, 2006

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Sections 27388.5 and 27388.7 to the Government Code, relating to recording fees.

LEGISLATIVE COUNSEL'S DIGEST

SB 308, Simitian. Recording fees: Elder and Dependent Adult Financial Abuse Prevention Trust Fund.

Existing law proscribes crimes against elder and dependent adults involving physical and financial abuse.

Existing law also provides that in addition to other recording fees, upon the adoption of a resolution by the county board of supervisors, a fee of up to \$2 shall be paid at the time of recording of every real estate instrument, as defined. The fees collected are required to be placed in the Real Estate Fraud Prosecution Trust Fund to be distributed by the county chief administrative officer, as determined by a Real Estate Fraud Prosecution Trust Fund Committee, to district attorneys and local law enforcement agencies for the purpose of determining, investigating, and prosecuting real estate fraud crimes.

This bill would authorize imposition of a similar fee for purposes of funding programs to deter, investigate, and civilly prosecute elder or dependent adult financial abuse in the context of real estate transactions. The additional fee authorized by the bill would be required to be placed in a county Elder and Dependent Adult Financial Abuse Prevention Trust Fund, to be expended for these purposes. This bill would require the county auditor or director of finance to distribute moneys in the fund to eligible agencies for expenditure, as determined by the Elder and Dependent Adult Financial Abuse Prevention Trust Fund Committee or the Real Estate Fraud Protection Trust Fund, as specified. The bill would limit the maximum amount that may be deducted for administrative purposes when a county adopts a resolution imposing fees authorized by both the bill and existing law. The bill would also require the trust fund committees established by this bill and existing law to consult with members of private industry at least semiannually. The bill would require

annual committee and district attorney reports made to the board of supervisors to be made available to the public upon request.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) A large proportion of the incidents of elder or dependent adult abuse involve incidents of financial abuse. Elders and dependent adults often risk loss of their homes or equity as a result of such incidents.

(b) There is an important need to assist targets of elder and dependent adult financial abuse in recovering property, especially personal residences, that are lost or threatened with loss by the abuse.

(c) The most common and most serious forms of elder and dependent adult financial abuse involve real estate fraud that may be subject to prosecution pursuant to Section 27388 of the Government Code.

(d) California families benefit generally through the prevention and prosecution of fraud against elders and dependent adults. Moreover, protection of the integrity of the real estate recordation system through aggressive prosecution of related elder and dependent adult financial abuse directly benefits all Californians who utilize and rely upon that system.

(e) The most effective protection for targets of real estate fraud and elder and dependent adult financial abuse may require a combination of civil and criminal actions.

(f) Local governments often lack the resources necessary to aggressively prosecute this elder and dependent adult financial abuse. A principal purpose of this act is to provide local governments with additional tools to accomplish these goals.

(g) Therefore, actions brought using funds accumulated pursuant to this act should be coordinated, to the extent possible, with actions brought pursuant to Section 27388 of the Government Code. Funds accumulated in a county Elder and Dependent Adult Financial Abuse Prevention Trust Fund should be utilized only for their intended purpose of financing civil proceedings to deter, investigate, and civilly prosecute elder and dependent adult financial abuse and prevent the loss as well as

facilitate the recovery of property as the result of these unlawful activities.

SEC. 2. Section 27388.5 is added to the Government Code, to read:

27388.5. (a) In addition to any other recording fees specified in this code, upon the adoption of a resolution by the county board of supervisors, a fee of up to two dollars (\$2) shall be paid at the time of recording of every real estate instrument, paper, or notice required or permitted by law to be recorded within that county, except those expressly exempted from payment of recording fees. “Real estate instrument” is defined for the purpose of this section as a deed of trust, an assignment of deed of trust, a reconveyance, a request for notice, and a notice of default. “Real estate instrument” does not include any deed, instrument, or writing subject to the imposition of a documentary transfer tax as defined in Section 11911 of the Revenue and Taxation Code, or any document required to facilitate the transfer subject to the documentary transfer tax. The fees, after deduction of any actual and necessary administrative costs incurred by the county in carrying out this section, shall be paid quarterly to the county auditor or director of finance, to be placed in a county Elder and Dependent Adult Financial Abuse Prevention Trust Fund. The amount deducted for administrative costs shall not exceed 10 percent of the fees paid pursuant to this section.

(b) Money placed in the fund shall only be expended to fund programs to deter, investigate, and civilly prosecute elder or dependent adult financial abuse in the context of real estate transactions.

(c) The county auditor or director of finance shall distribute moneys in the fund to eligible governmental agencies or offices pursuant to subdivision (b). If the county has a Real Estate Fraud Protection Trust Fund Committee, the distribution shall be determined by that committee, which shall be expanded for purposes of this section only to include the public guardian, the director of adult protective services, and the county counsel. If the county does not have a Real Estate Fraud Protection Trust Fund Committee, the distribution shall be determined by an Elder and Dependent Adult Financial Abuse Prevention Trust Fund Committee, which shall be constituted and composed of the county chief administrative officer, the chief officer responsible

for consumer protection within the county, the public guardian, adult protective services, the district attorney, and county counsel. Members may appoint representatives of their offices to serve on the committee. If a county lacks a chief officer responsible for consumer protection, the county board of supervisors may appoint an appropriate representative to serve on the committee. The committee shall establish and publish deadlines and written procedures for local government agencies or offices within the county to apply for the use of funds and shall review applications and make determinations by majority vote as to the award of funds using the following criteria:

(1) Each government agency or office (hereafter agency) that seeks funds shall submit a written application to the committee setting forth in detail the agency's proposed use of the funds.

(2) In order to qualify for receipt of funds, each agency submitting an application shall provide written evidence that the agency either:

(A) Has a unit, division, or section devoted to the investigation or civil prosecution of elder and dependent adult abuse or is in the process of establishing such a unit, division, or section; or

(B) Has on a regular basis, during the three years immediately preceding the application date, accepted for investigation or civil prosecution, or assigned to specific persons employed by the agency, cases of suspected elder and dependent adult financial abuse, and actively investigated or prosecuted those cases.

(3) The committee's determination to award funds shall be based on, but not limited to, the following:

(A) The number of cases investigated or filed in the prior year.

(B) The number of victims involved in the cases investigated or filed.

(C) The total aggregated monetary loss suffered by victims, including individuals, associations, institutions, or corporations, as a result of the elder and dependent adult abuse cases filed, and those under active investigation.

(D) The total aggregate monetary amount recovered or preserved.

(4) Each governmental agency that, pursuant to this section, has been awarded funds in the previous year, upon reapplication for funds to the committee in each successive year, in addition to any information the committee may require in paragraph (3),

shall be required to submit a detailed accounting of funds received and expended in the prior year. The accounting shall include all of the following:

- (A) The amount of funds received and expended.
- (B) The uses to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies, and other expenditures by type.
- (C) The number of filed complaints, investigations, arrests, and convictions that resulted from the expenditure of the funds.
- (D) Other relevant information the committee may reasonably require.

(d) For purposes of this section, the county board of supervisors shall annually review the effectiveness of agencies in deterring, investigating, and prosecuting civil proceedings involving elder or dependent adult financial abuse in the context of real estate transactions, based upon information provided by the committee in an annual report submitted to the board detailing both of the following:

- (1) Facts, based upon, but not limited to, all of the following:
 - (A) The number of proceedings filed in the prior year.
 - (B) The number of cases investigated in the prior year.
 - (C) The number of victims involved in the proceedings filed.
 - (D) The number of judgments obtained in the prior year.
 - (E) The total aggregated monetary loss suffered by victims.
 - (F) The total aggregated monetary amount recovered or preserved.

(2) An accounting of funds received and expended in the prior year, which shall include all of the following:

- (A) The amount of funds received and expended.
- (B) The uses to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies, and other expenditures by type.
- (C) The number of filed proceedings, investigations, and judgments.
- (D) Other relevant information, provided at the discretion of each agency.

(e) The intent of the Legislature in enacting this section is to have an impact on elder or dependent adult financial abuse involving the largest number of victims. To the extent possible, an emphasis should be placed on fraud against individuals whose

residences are in danger of, or are in, foreclosure as defined under subdivision (b) of Section 1695.1 of the Civil Code. Case filing decisions continue to be in the discretion of the county counsel.

(f) An agency that has undertaken investigations and civil prosecutions that will continue into a subsequent program year may receive nonexpended funds from the previous fiscal year subsequent to the annual submission of information detailing the accounting of funds received and expended in the prior year.

(g) No money collected pursuant to this section may be expended to offset a reduction in any other source of funds. Funds from the Elder and Dependent Adult Financial Abuse Prevention Trust Fund shall be used only in connection with the prevention, investigation, or civil prosecution of fraudulent transactions involving recordable real estate documents, or recovery efforts for victims as a result of those transactions.

(h) A county may adopt the resolution and exercise the powers authorized by this section regardless of whether it has implemented Section 27388.

SEC. 3. Section 27388.7 is added to the Government Code, to read:

27388.7. (a) Notwithstanding any other provision of law, if a county adopts a resolution imposing fees authorized by both Sections 27388 and 27388.5, then the maximum amount that may be deducted by the county for administrative costs shall not exceed 7.5 percent of the fees collected from each of the respective trust funds.

(b) If a county adopts a resolution imposing fees authorized under Section 27388, the county shall also require the Real Estate Fraud Prosecution Trust Fund Committee to consult at least semiannually with a representative member of the title insurance industry, a representative member of the real estate trade association, and a representative member of the lending industry.

(c) (1) If a county adopts a resolution imposing fees authorized under Section 27388.5, and the county has also adopted a resolution imposing fees authorized under Section 27388, the county shall require the expanded Real Estate Fraud Prosecution Trust Fund Committee to consult at least semiannually with a representative member of the title insurance

industry, a representative member of the real estate trade association, and a representative member of the lending industry.

(2) If a county adopts a resolution imposing fees authorized under Section 27388.5, but has not adopted a resolution imposing fees authorized under Section 27388, the county shall require the Elder and Dependent Adult Financial Abuse Prevention Trust Fund Committee to consult at least semiannually with a representative of the title insurance industry, a representative member of the real estate trade association, and a representative member of the lending industry.

(d) Annual committee and district attorney reports made to the board of supervisors shall be made available to the public upon request.

Approved _____, 2006

Governor